

DIVISION OF LOCAL GOVERNMENT SERVICES

New Residential Construction Off-Site Conditions Disclosure

Responsibilities of the Municipality/Information Required to be Made Available

Proposed Amendment: N.J.A.C. 5:38-2.1

Authorized By: Susan Bass Levin, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-3(e) and 46:3C-4 and 5.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003-375

Submit comments by November 14, 2003 to:

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The agency proposal follows:

Summary

N.J.A.C. 5:38 was adopted as new rules, effective September 15, 2003 (See Notice of Adoption published elsewhere in this issue of the New Jersey Register). Prior to adoption, the rules expired temporarily due to a delay in responding to comments received on the readoption proposal, which was published in the New Jersey Register on December 2, 2002 at 34 N.J.R. 4018(a). In particular, concern was raised by the New Jersey Association of Environmental Authorities (AEA) that the disclosure of information on the location of underground gas lines, high voltage overhead electric transmission lines, electrical transformer substations, hazardous discharge sites, sewer pump stations, sanitary landfill facilities, public wastewater treatment facilities and airport safety zones, as required by P.L. 1995, c.253 and as supplemented in the rules at N.J.A.C. 5:38, could potentially be used by persons who are intent on disrupting public services.

In view of this concern, the Division of Local Government Services (Division) contacted the Office of Counter Terrorism (OCT) to determine their reactions to the rules and to the comments that were received. OCT agreed that disclosure of the above-noted information could potentially imperil public safety, and recommended further that the rules be amended, so that the release of information is more closely guarded. Both AEA and OCT felt that the rules should be amended to require municipal clerks to request a valid form of identification from the person seeking the information, including that person's name, address and telephone number. They also felt that municipal clerks should be required to keep a registry of all requests, noting the type of information requested, the date of the request, and the reason for the request. In addition, AEA and OCT concurred that municipal clerks should be allowed to redact, pursuant to the Open Public Records Act (N.J.S.A. 47:1A-1.1 et seq.), specific and technical data about the offsite conditions. The proposed amendment at N.J.A.C. 5:38-2.1 incorporates these recommendations. The amendment at N.J.A.C. 5:38-2.1(a) specifies that the information on offsite conditions is for visual inspection only. The amendment at N.J.A.C. 5:38-2.1(b) specifies that the information is available for public inspection at the office of the municipal clerk. The amendment at N.J.A.C. 5:38-2.1(c)1 requires municipal clerks to ensure that any person requesting information has a valid identification. The amendment at N.J.A.C. 5:38-2.1(c)2 requires municipal clerks to maintain a registry of all persons requesting information. The amendment at N.J.A.C. 5:38-2.1(c)3 allows municipal clerks to redact, pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., specific and technical data about the offsite conditions.

As the Division of Local Government Services has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendment will enhance public safety and domestic security by scrutinizing more closely the identity of persons seeking information on off-site conditions, and by allowing municipal clerks to redact, where appropriate, specific and technical data about the off-site conditions.

Economic Impact

Although municipal clerks will be required to keep a registry of all requests, the task of doing so should neither be time-consuming, costly nor burdensome. Most likely, municipal clerks will have to prepare a standard form, similar to a sign-in sheet, requiring the name, address, and phone number of the person requesting the information, the type of information requested, the date of the request, and the reason for the request. Once the form is prepared, the required information will have to be filled-in by the clerk. These procedures are within the realm of routine services and no economic impact is anticipated.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendment is not subject to any Federal requirements or standards.

Jobs Impact

The Division does not believe that the proposed amendment will have any bearing on the State jobs market.

Agriculture Industry Impact

The proposed amendment will not impact the agriculture industry in New Jersey.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment imposes requirements on municipal clerks.

Smart Growth Impact

The proposed amendment will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

5:38-2.1 Information required to be made available

- (a) The municipal clerk of each municipality shall make available to the public, **for inspection only**, the following:
- 1.-5. (No change.)
- (b) Maps and lists shall be made available for public inspection **in the office of the municipal clerk** at no charge.
- (c) The municipal clerk shall: [not charge the public more than the cost of reproduction for each page of these documents, and no fee may be charged for review of the documents by the public in the office of the clerk. If a member of the public requests the documents to be mailed, the charge may include the cost of packaging and postage.]
1. **Require persons requesting information to present valid identification, such as a driver's license, passport, or other form of photo identification, as a prerequisite to inspecting the off-site conditions list.**
 2. **Maintain a registry of all persons requesting the offsite information, including the person's name, address, telephone number, type of information requested, reason for requesting the information, and the date of the request.**
 3. **Redact, pursuant to the Open Public Records Act, N.J.S.A. 47:1A 1.1 et seq., specific and technical data about the off-site conditions, including the identity of a facility manager and site layouts or blueprints of a particular facility.**
- (d)-(e) (No change.)